

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

Second Periodic Review of the)
Commission's Rules and Policies)
Affecting the Conversion)
to Digital Television)

MB Docket No. 03-15

RM 9832

To: The Commission

REPLY COMMENTS OF THE RURAL 700 MHz BAND LICENSEES

The Rural 700 MHz Band Licensees, by their attorneys, hereby submit these reply comments to the *Notice of Proposed Rulemaking* in the above-captioned docket.¹ A list of the rural telephone companies, cooperatives and rural telco subsidiary companies that comprise the "Rural 700 MHz Band Licensees" is attached below.

Each of the Rural 700 MHz Band Licensees participated in the FCC's recent Lower 700 MHz Band auction ("Auction No. 44") and a number of them have filed short-form applications to participate in the upcoming reauction of Lower 700 MHz Band licenses ("Auction No. 49"), which is scheduled to begin on May 28, 2003.² Because each of these licensees has expended substantial resources in acquiring their licenses, and each has plans to develop their Lower 700 MHz Band spectrum by providing fixed and/or mobile wireless telecommunications services, each has a significant stake in the outcome of this proceeding.

¹ In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Notice of Proposed Rulemaking*, MM Docket No. 03-15 (*rel. Jan. 27, 2003*) ("*NPRM*").

Comments by Lower 700 MHz Band licensees and equipment manufacturers alike have described a general perception in the financial, manufacturing and telecom markets that the broadcast industry will be able to extend the DTV transition many years beyond the current target date of December 31, 2006. This so-called “Incumbency Perception,” as one commenter has termed it,³ affects licensees’ ability to finance system build-out, as well as the availability of system equipment and consumer devices tuned for the 700 MHz Band. Each of the Rural 700 MHz Band Licensees is eager to construct and to begin providing broadband wireless services to the rural areas where they are licensed to provide Lower 700 MHz Band service. However, because larger licensees and equipment manufacturers are reluctant to make significant investments until Lower 700 MHz Band broadcasters have been cleared from major markets, this “Incumbency Perception” is effectively preventing the Rural 700 MHz Band Licensees from being able to build 700 MHz band networks even in markets where the Lower 700 MHz C-Block spectrum is unencumbered and there are no full-power broadcasters that need to be protected.

The Rural 700 MHz Band Licensees join the majority commenters in this proceeding who seek a prompt and certain clearing of both the Lower and Upper 700 MHz Band. A policy of strict enforcement of any and all deadlines adopted in this proceeding is one way that the Commission can help to address the Incumbency Perception. The Rural 700 MHz Band Licensees also support comments urging the FCC to take a pro-active role in seeking Congressional clarification of Section 309(j)(14) of

² See *Public Notice* Report No. AUC-03-49-C, Auction of Licenses in the Lower 700 MHz Band Scheduled for May 28, 2003, DA 03-567 (*rel.* March 4, 2003) (“*Lower 700 MHz Reauction Notice*”).

³ See Comments of Cavalier Group, LLC (“Cavalier Comments”) at p. 13.

the Communications Act of 1934, as amended (the “Act”) before the “15% exception” becomes the subject of protracted litigation.

I. The FCC Should Facilitate the Timely Clearing of TV Channels 52-69 so that Lower and Upper 700 MHz Band Spectrum may be Utilized for Commercial Service and Public Safety Operations.

A majority of commenters in this proceeding have urged the Commission to adopt policies and rules that facilitate the timely clearing of the 700 MHz Band, so the spectrum may be utilized for commercial service and/or public safety operations.⁴ The Rural 700 MHz Band Licensees urge the FCC to make whatever decisions are necessary to ensure that the DTV transition and recovery of spectrum in the 700 MHz Band proceeds in a manner that allows the American public to realize the benefits of the transition in as short a time as possible. In this regard, the Commission should establish deadlines for construction, replication and channel election that are early enough to make December 31, 2006 a realistic target date for ending the DTV transition. The Lower 700 MHz Band spectrum is far too valuable a resource to allow it to remain unused or underutilized any longer.

- a. Set early deadlines for construction, replication and maximization for in-core channels and channel election; reclaim digital allotments of stations that fail to participate in the DTV transition.***

The Commission has noted that “it may be appropriate to establish earlier replication and/or maximization protection deadline(s) for incumbent broadcasters in [the

⁴ See, e.g., Comments of Access Spectrum, LLC (“Access Spectrum Comments”) at p. 2; Comments of Aloha Spectrum, L.P. (“Aloha Comments”) at p. 2; Comments of Cavalier Group, LLC (“Cavalier Comments”) at pp. 3-13; Comments of Crown Castle USA, Inc. (“Crown Castle Comments”) at pp. 1-5; Comments of Flarion Technologies, Inc. (“Flarion Comments”) at p. 1; Comments of KanOkla Telephone Association, Inc., Peoples Telephone Cooperative, Inc. and Arctic Slope Telephone Association Cooperative (“KanOkla Comments”) at pp. 3-4; Comments of Harbor Wireless, L.L.C. (“Harbor Comments”) at p. 2.

700 MHz Band] spectrum” to “speed the clearing of the band for use by new services and to ensure continued progress in the digital transition.”⁵ In this regard, the Rural 700 MHz Band Licensees agree with Aloha Partners, L.P. (“Aloha”) that the public interest would be served by the Commission clarifying that all digital broadcast stations in the Lower 700 MHz Band that are not now operational must be fully constructed (*i.e.*, full replication and maximization) on or before June 30, 2004 or else be abandoned.⁶ As an additional incentive (and to prevent immediate license forfeiture), the Commission may want to adopt an interim deadline for all digital stations in the Lower 700 MHz Band to have commenced operations within six months following the issuance of the *Second DTV Periodic Review Report and Order*.

The Rural 700 MHz Band Licensees believe that “use it or lose it” deadlines that will terminate interference protection for analog replication or coverage maximization for DTV stations operating in the Lower and Upper 700 MHz Bands are the only certain way for the Commission to keep the DTV transition moving forward on a reasonable schedule. As the Commission’s progress report indicates, over 70 percent of the 1,196 commercial television stations subject to the May 1, 2002 deadline sought extensions of their construction permits, and as of January 7, 2003, a majority have requested an additional extension of time to construct.⁷ Unless the FCC adopts meaningful deadlines for lifting interference protection, broadcasters have little incentive to use their replication or maximization facilities before the end of the DTV transition period.⁸ The

⁵ *NPRM* at ¶ 40.

⁶ Aloha Comments at p. 3.

⁷ *NPRM* at ¶¶ 8-11.

⁸ Flarion Comments at p. 3.

Commission itself has noted that non-core DTV licensees may never intend to serve their full NTSC replication service areas during the DTV transition.⁹

The Rural 700 MHz Band Licensees agree with Access Spectrum that early DTV channel election deadlines must be firmly established and strictly enforced. In particular, the FCC should establish a DTV channel election deadline of no later than May 1, 2005 for licensees with in-core NTSC and DTV channel assignments to decide which of the two channels they will use after the DTV transition. Having stations decide which one of the channels would be most suitable for use in digital broadcasting will assist the FCC to determine which channels will be available for stations with two out-of-core channels and to clear the Lower 700 MHz Band spectrum. In this regard, the Rural 700 MHz Band Licensees support the comments of Davis Television Wausau, LLC (“Davis”) insofar as they call for the FCC to adopt a channel election date “sufficiently in advance of the transition period’s end to allow in-core channel assignments to be secured and the timely transition to digital completed.”¹⁰ Davis currently operates an analog broadcast station on Channel 55 in Wausau, Wisconsin. By facilitating a prompt in-core channel election and migration by Davis, Lower 700 MHz Band C-Block licensees in nearby markets, such as 3G COMM, LLC (“3G COMM”)¹¹ will be able to conduct testing at an earlier date and to have greater technical flexibility when deploying their Lower 700 MHz Band network.

⁹ *NPRM* at ¶¶ 53-54.

¹⁰ Comments of Davis Television Wausau, LLC (“Davis Comments”) at p. 2-3.

¹¹ 3G COMM was the high bidder in FCC Auction No. 44 for the Lower 700 MHz C-Block license in the Appleton-Oshkosh MSA (CMA125) and currently holds a license in this market under Call Sign WPWU882.

b. Consider Additional Incentives to Facilitate Early Clearing of Lower 700 MHz Band Spectrum

To facilitate clearing of the Lower 700 MHz Band spectrum prior to the end of the DTV transition, the Rural 700 MHz Band Licensees believe that the Commission should provide broadcasters with meaningful incentives, such as priority in final DTV channel selection or additional time to achieve maximization of their DTV facilities. Another such incentive might be along the lines of the “Clearing Option” proposed by Cavalier.¹² Under the Clearing Option, if a station elects to retain an out-of-core channel, digital or analog, then it must timely construct and operate (*i.e.*, “use or lose”) a digital facility which fully replicates its NTSC Grade B service area, and operate it with significant digital programming. Any station with an out-of-core channel that elects to clear the out-of-core channel at or prior to the end of 2006 would not be required to construct and operate a separate digital station.¹³

If the Commission is reluctant to adopt an incentive program for all out-of-core broadcasters at once and it wants to study the utility of such a mechanism, the Rural 700 MHz Band Licensees agree with Cavalier that it might be phased-in for broadcasters with out-of-core stations on channels 54, 55 or 59 (the “Auctioned Channels”).¹⁴ If the Clearing Option is effective in helping to clear the Auctioned Channels without a material adverse impact on the DTV transition, then the FCC could subsequently allow other out-of-core broadcasters to make the election.¹⁵

¹² Cavalier Comments, at p. 7.

¹³ *Id.* at Summary iv-v.

¹⁴ *Id.* at p. 9.

¹⁵ *Id.*

II. The Commission Must Strictly Enforce All DTV Transition Deadlines

Now that the FCC has begun its licensing of the Lower 700 MHz Band, the Commission should inject some certainty into the process and adopt a policy to enforce strictly all DTV transition deadlines. The Rural 700 MHz Band Licensees believe that this is the best way for the FCC to address the “Incumbency Perception” and to facilitate the widespread deployment of 700 MHz Band networks in large and small markets.

The Commission’s experience with DTV buildout by the top four network stations should be proof enough that strict deadlines are effective.¹⁶ The fact that virtually all of the network DTV stations in the top 30 television markets were timely constructed and placed into operation demonstrates that when broadcasters are held to strict deadlines, by and large they meet their obligations.

III. The FCC Should Take the Lead in Seeking Any Necessary Clarification of Section 309(j)(14) of the Communications Act

Section 309(j)(14) of the Act requires analog TV broadcasters to cease operation in the recovered spectrum by the end of 2006, unless the Commission extends the end of the transition. The Commission is required to grant such extension at the request of individual broadcast licensees on a market-by-market basis, if: (1) one or more of the four largest network stations or affiliates is not broadcasting in digital format; (2) digital-to-analog converter technology is not generally available; or, (3) 15 percent or more of television households are not receiving a digital signal.¹⁷ The complexity of the issues raised by this statutory provision are demonstrated by the fact that the NPRM “devotes some 26 paragraphs to addressing proposed implementation of the 15% exception

¹⁶ NPRM at ¶ 9.

¹⁷ 47 U.S.C. §309(j)(14)(A)-(B).

included in 47 U.S.C. § 309(j)(14).”¹⁸ To forestall the potential for protracted litigation over these issues, the Rural 700 MHz Band Licensees agree with commenters who believe that the FCC should take the lead in informing Congress that if it does not take action to clarify key terms and phrases in Section 309(j)(14), litigation will likely be used to extend the transition after the end of 2006 in many markets where it would otherwise not be extended.¹⁹

With regard to application of the 15% test, the Rural 700 MHz Band Licensees agree with commenters who believe that blanket extensions under Section 309(j)(14) are not appropriate;²⁰ and that an applicant for an extension under Section 309(j) should bear all burdens of proof associated with its requests.²¹

IV. CONCLUSION

The fact that Congress singled out the Lower 700 MHz C- and D-Block licenses for early auction clearly indicates a public interest policy by the legislative branch to foster the deployment of advanced communications service to rural areas as soon as possible using these frequencies.²² While the auctioned Lower 700 MHz is unencumbered in many rural areas, rapid deployment can only occur if equipment manufacturers devote their resources to producing affordable equipment for the 700 MHz bands. It is unlikely that this will occur unless and until the bands are cleared of incumbents nationwide, thereby creating the necessary scale of equipment demand.

¹⁸ Aloha Comments at 4 (citing *NPRM ¶¶* 69-95).

¹⁹ *See, e.g.*, Cavalier Comments at pp. 30-31; Harbor Comments at p. 6.

²⁰ *See, e.g.*, Harbor Comments at p. 4; Aloha Comments at 4.

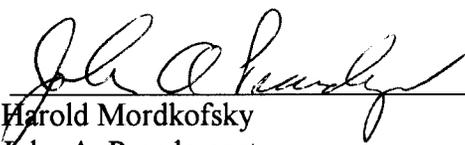
²¹ *See, e.g.*, Aloha Comments at 5;

²² KanOkla Comments at 6.

Therefore, the Rural 700 MHz Band Licensees respectfully urge the Commission to make the prompt and certain clearing of both the Lower and Upper 700 MHz Band a priority in this proceeding. The Rural 700 MHz Band Licensees also believe that the FCC should strictly enforce all DTV transition deadlines. The Commission should also take a proactive role in seeking Congressional clarification of Section 309(j)(14) of the Communications Act of 1934, as amended (the "Act") before the "15% exception" becomes the subject of protracted litigation.

Respectfully submitted,

THE RURAL 700 MHz BAND LICENSEES

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Attachment A

A list of the rural telephone companies, cooperatives and rural telco subsidiary companies that comprise the “Rural 700 MHz Band Licensees” is provided below.

- 3G COMM, LLC
- Allcom Communications, Inc.
- Cameron Communications Corporation
- Dickey Rural Services, Inc.
- First Cellular of Southern Illinois
- Kennebec Telephone Company
- North Dakota Network Company
- PVT Networks, Inc.